

Hearing Date: October 23, 2019, at 10:00 a.m.
Objection Deadline: October 16, 2019, at 4:00 p.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**NOTICE OF HEARING ON APPLICATION OF NORTHERN INDIANA PUBLIC
SERVICE COMPANY LLC FOR PAYMENT FROM THE ADEQUATE
ASSURANCE ACCOUNT PURSUANT TO SECTION 7 OF THE ORDER (I)
APPROVING DEBTORS' PROPOSED FORM OF ADEQUATE ASSURANCE OF
PAYMENT TO UTILITY PROVIDERS, (II) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE
UTILITY SERVICES, AND (III) PROHIBITING UTILITY PROVIDERS
FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICE**

PLEASE TAKE NOTICE THAT a hearing to consider the *Application of
Northern Indiana Public Service Company LLC for Payment from the Adequate Assurance
Account Pursuant to Section 7 of the Order (I) Approving Debtors' Proposed Form of Adequate
Assurance of Payment to Utility Providers, (II) Establishing Procedures for Determining
Adequate Assurance of Payment for Future Utility Services, and (III) Prohibiting Utility
Providers from Altering, Refusing, or Discontinuing Utility Service* (the "Application") filed on
behalf of Northern Indiana Public Service Company LLC ("NIPSCO"), will be held before the

Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601-4140 (the “Bankruptcy Court”) on **October 23, 2019, at 10:00 a.m. (prevailing Eastern Time)** (the “Hearing”), or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE THAT any responses or objections (the “Objections”) to the Application shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-RM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Amended Order Implementing Certain Notice and Case Management Procedures*, entered on November 1, 2018 [Doc. No. 405], so as to be filed and received no later than **October 16, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE THAT if no Objections are timely filed and served with respect to the Application, NIPSCO may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Application, which order may be entered without further notice or opportunity to be heard.

Dated: August 27, 2019
New York, New York

Respectfully submitted,

REED SMITH, LLP

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SOUTHERN DISTRICT OF NEW YORK**

IN RE:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**APPLICATION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY
LLC FOR PAYMENT FROM THE ADEQUATE ASSURANCE ACCOUNT
PURSUANT TO SECTION 7 OF THE ORDER (I) APPROVING DEBTORS'
PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT TO UTILITY
PROVIDERS, (II) ESTABLISHING PROCEDURES FOR DETERMINING
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES,
AND (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING,
REFUSING, OR DISCONTINUING UTILITY SERVICE**

Northern Indiana Public Service Company LLC ("NIPSCO"), through its undersigned counsel, hereby files this application (this "Application") seeking payment for post-petition natural gas utility service from the adequate assurance account (the "Adequate Assurance Account") established by Sears Holdings Corporation ("Sears") and its affiliated debtors in these jointly administered proceedings (collectively, "Debtors") pursuant to the *Order (I) Approving Debtors' Proposed Form Of Adequate Assurance Of Payment To Utility Providers, (II) Establishing Procedures For Determining Adequate Assurance Of Payment For*

Future Utility Services, And (III) Prohibiting Utility Providers From Altering, Refusing, Or Discontinuing Utility Service, entered on November 5, 2018, [Doc. No. 461] (the “Utilities Order”). In support of this Application, NIPSCO submits the declaration of Angela F. Sanchez, a copy of which is attached hereto as **Exhibit A** (“Sanchez Decl.”), and respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 366 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”).

FACTUAL BACKGROUND

2. On October 15, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”).

3. On October 18, 2018, the Debtors filed the *Motion of Debtors Requesting Entry of an Order (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment to Utility Providers, (II) Establishing Procedures for Determining Adequate Assurance of Payment for Future Utility Services, and (III) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Utility Service* [Doc. No. 196] (the “Utilities Motion”).

4. On November 5, 2018, the Court granted the Utilities Motion and entered the Utilities Order. See Doc. No. 461.

5. The Utilities Order provides that the Debtors shall deposit a pre-determined amount of cash into the Adequate Assurance Account, and such amount “shall be

allocated for, and payable only to, each Utility Provider in the amount set forth for such Utility Provider in **Exhibit 1**” Utilities Order ¶ 3. The applicable exhibit indicates that the Debtors deposited \$37,654.63 into the Adequate Assurance Account for NIPSCO. See Ex. 1 (p. 104 of 151), attached to Ex. 2 of the Utilities Order. Of that amount, NIPSCO understands that \$20,070.48 is allocable to Sears’s accounts with NIPSCO. Sanchez Decl. ¶ 12.

6. The Utilities Order provides further:

If the Debtors fail to pay a utility bill when due (including the passage of any cure period), the relevant Utility Provider shall provide notice of such default to the Debtors, and if within five (5) business days of such notice the bill is not paid, the Utility Provider may file an application with the Court certifying that payment has not been made and requesting the amount due up to an aggregate maximum equal to the Adequate Assurance Deposit allocable to such Utility Provider.

Utilities Order ¶ 7.

7. Following the Petition Date, NIPSCO provided natural gas utility service to Sears at a number of locations, including 154 Hively, Ste 28, Elkhart, IN 46517-2160, identified by post-petition account number ending in 005-0 (the “Delinquent Account”). Sanchez Decl. ¶ 5.

8. On April 2, 2019, Sears contacted NIPSCO for the first time to request that natural gas service for the Delinquent Account be shut off as of April 4, 2019. Id. ¶ 6.

9. On April 4, 2019, NIPSCO shut off service and sent Sears a final bill for the Delinquent Account. Id. ¶ 7. Because payment was not received, NIPSCO sent a reminder notice on May 8, 2019, and a collection warning notice on May 22, 2019. Id. ¶ 8. Copies of the final bill, the reminder notice, and the collection warning notice are attached hereto as **Exhibit B**, **Exhibit C**, and **Exhibit D**, respectively.

10. By notice dated July 31, 2019, NIPSCO (through counsel) notified Sears that it is in default for failure to pay NIPSCO amounts due for natural gas utility service provided in connection with the Delinquent Account in the aggregate amount of \$23,238.15. Sanchez Decl. ¶ 10. A copy of the notice of default, which is consistent with the requirements of section 7 of the Utilities Order, is attached hereto as **Exhibit E**.

11. As of the date of this Application, NIPSCO has not received any portion of past due post-petition amount owed on the Delinquent Account. Sanchez Decl. ¶ 11.

RELIEF REQUESTED

12. By this Application, NIPSCO requests the entry of an order, pursuant to section 366 of the Bankruptcy Code and paragraph 7 of the Utilities Order, requiring Sears to remit to NIPSCO the amount due on the Delinquent Account up to an aggregate maximum equal to the adequate assurance deposit allocable to NIPSCO under the Utilities Order.

WHEREFORE, NIPSCO respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit F**, (i) directing the Debtors to remit payment in an amount equal to \$20,070.48 (or such greater amount as may be permissible under the Utilities Order not to exceed \$23,238.15) from the Adequate Assurance Account to NIPSCO as soon as reasonably practicable, but in any event no later than fourteen (14) days from the date of the order, and (ii) granting such other and further relief as this Court deems just and appropriate.

Dated: August 27, 2019
New York, New York

Respectfully submitted,

REED SMITH LLP

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